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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,278

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Jack A. DeBaal

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EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,278

Applicant(s)

DEBRAAL

Examiner

Hanh V. Tran

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 4/5/2006.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4, and 13, 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, there is STILL an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble clearly indicates that a subcombination is being claimed, e.g., "a camming mechanism for maintaining a predetermined spacing between a first sleeve having an outer longitudinally extending wall,...., said camming mechanism comprising..." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of a "camming mechanism," the sleeve members being only functionally recited. The problem arises when the sleeve members being positively recited within the body of the claim, such as, "a longitudinally extending guide rail secured [emphasis added] to one of said sleeve members." In this case, there is an inconsistency within the body of the claim. The preamble indicates subcombination, while in the body of the claim in at least one instance there is a positive recital of structure indicating that the combination of a camming mechanism and sleeve

Art Unit: 3637

members is being claimed. The examiner cannot be sure if applicant's intent is to claim merely the camming mechanism or the camming mechanism in combination with the sleeve members. Applicant is required to clarify what the claim is intended to be drawn to, and the language of the claim amended to be consistent with applicant's intent. For the purpose of this examination, the examiner is considering the claim is drawn to the combination of a camming mechanism and sleeve members. Since applicant's remark clearly stated that the intent is to claim the combination of the camming mechanism and the sleeves, lines 1-2, "A camming mechanism for maintaining a predetermined spacing between" should be "A camming mechanism in combination with a pair of nesting, slidably relative sleeve members for maintaining a predetermined spacing between said pair of sleeve members, said pair of sleeve members including"

Claim 13, since claim 10 recited only one guide rail, i.e., "at least one longitudinally extending guide rail", the recitation in claim 13, line 2, of "at least one of said at least one longitudinally extending guide rails" STILL lacks antecedent basis. Should applicant elect to amend the claim in order to obviate this rejection, the limitation "at least one of said at least one longitudinally extending guide rails" should be "said at least one longitudinally extending guide rail"

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

Art Unit: 3637

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-7, 9-11, and 13 stand rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,546,880 to Agee.

Agee discloses an adjustable examination table comprising all the elements recited in the above listed claims including a support table 18, a stationary base 12, an adjustable height column comprising a plurality of sleeve sections slidably, nestingly connected to one another; at least one longitudinally extending guide rail 32 secured to one of the sleeve sections and having oppositely disposed parallel guide surfaces, such as shown in Fig 3; a first pair of oppositely disposed spaced apart cam followers 30, a second pair of oppositely disposed space apart cam followers 30 being latitudinally spaced apart from said first pair of cam followers, such as shown in Fig 2; and means for sliding said sleeve sections relative to one another.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 3637

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 8 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Agee in view of USP 6,682,030 to Santoro et al.

Agee discloses all the elements as discussed above except for the sliding means comprises a linear actuator.

Santoro et al discloses an alternate height adjustable table comprising a plurality of sleeve sections slidably, nestingly connected to one another, means for sliding said sleeve sections relative to one another; wherein said sliding means comprises a linear actuator 68, such as shown in Fig 14, in order to adjust the height of the table.

Therefore, it would have been obvious and well within the level of one skill in the art to modify the structure of Agee by providing an alternate sliding means which comprises a linear actuator in order to adjust the height of the table, as taught by Santoro et al, since both teach alternate conventional sliding means structure, used for the same intended purpose of adjustable a table height, thereby providing structure as claimed.

9. Claims 10-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,886,200 to Blyshak et al in view of SUP 6,546,880 to Agee.

Blyshak et al discloses an adjustable examination table comprising all the elements recited in the above listed claims including, such as shown in Fig 1, a support table 17, a stationary base 12, an adjustable height column comprising a plurality of sleeve sections 150 slidably, nestingly connected to one another; longitudinally extending guide rails secured to one of the sleeve sections, such as shown in Figs 12-

Art Unit: 3637

16, and means for sliding said sleeve sections relative to one another; wherein a middle sleeve section comprises at least one of said rails attached to its inner wall and at least one of said guide rails attached to its outer wall, such as shown in Figs 12-16, and said sliding means comprises a linear actuator, such as shown in Figs 8-10. The differences being that Blyshak et al does not disclose each of the guiding rails comprises oppositely disposed parallel guide surfaces; a first pair of oppositely disposed spaced apart cam followers, a second pair of oppositely disposed space apart cam followers being latitudinally spaced apart from said first pair of cam followers, with each of said cam followers being in longitudinally guiding contact with a respective one of said parallel guide surfaces.

Agee discloses an adjustable examination table comprising all the elements recited in the above listed claims including a support table 18, a stationary base 12, an adjustable height column comprising a plurality of sleeve sections slidably, nestingly connected to one another; at least one longitudinally extending guide rail 32 secured to one of the sleeve sections and having oppositely disposed parallel guide surfaces 60, such as shown in Figs 3-4; a first pair of oppositely disposed spaced apart cam followers 30, a second pair of oppositely disposed space apart cam followers 30 being latitudinally spaced apart from said first pair of cam followers, such as shown in Fig 2; and means for sliding said sleeve sections relative to one another; wherein the longitudinally extending guide rail and the cam followers 31 prevents translation of the sleeve sections from side to side and front to back directions, yet facilitates height adjustment of the table. Therefore, it would have been obvious to modify the structure

of Blyshak et al by providing the guiding rails each comprises oppositely disposed parallel guide surfaces; a first pair of oppositely disposed spaced apart cam followers, a second pair of oppositely disposed space apart cam followers being latitudinally spaced apart from said first pair of cam followers, with each of said cam followers being in longitudinally guiding contact with a respective one of said parallel guide surfaces in order to prevent translation of the sleeve sections from side to side and front to back directions, yet facilitates height adjustment of the table, as taught by Agee, since both teach alternate conventional height adjustable table structure, used for the same intended purpose of height adjustable table, thereby providing structure as claimed.

Response to Arguments

10. Applicant's arguments filed 4/5/2006 have been fully considered but they are not persuasive. In response to applicant's argument on page 6 that Agee is non-analogous, the examiner takes the position that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Agee is used for rejection under 35 USC 102, and is drawn to a vertically adjustable table; therefore, it is analogous.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "Agee does not contemplate supporting a person, as is the purpose of the present applicant and claims") are not recited in the rejected claim(s). Although the claims are

Art Unit: 3637

interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

12. In response to applicant's argument that "Agee does not show the described camming mechanism for the intended use, which is an important aspect of the present invention", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

13. In response to applicant's argument on page 7 that "Agee does not show a pair of nesting sleeve members as recited in claim 5", the examiner takes the position that as stated in the above art rejection, the claimed language fails to provide adequate structural limitations to the claim in order to distinguish from Agee, and the telescopically and nesting members of Agee meet the claimed limitations.

14. In response to applicant's argument on page 8 that Agee does not show a guide rail supported by a sleeve section and the cam members supported by the other sleeve section, the examiner takes the position that the guide rail 32 is secured to one of the sleeve sections and the cam members 30 is supported by the other sleeve member.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3637

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT *HVT*
June 23, 2006

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